BORA LASKIN LAW LIBRARY
3 1761 10631440 4

# MUNICIPAL AND PLANNING LAW

## S..M. Makuch

## PART TWO

## 1979-1980

with the assistance of
ANNE CORBETT

LAW LIBRARY
OCT 11 1979
FACULTY OF LAW
UNIVERSITY OF TORONTO

# MUNICIPAL AND PLANNING LAW

S.M. Makuch

PART TWO

1979-1980

with the assistance of

ANNE CORBETT

Digitized by the Internet Archive
in 2018 with funding from
University of Toronto

https://archive.org/details/municipalplannin02maku_3

# MUNICIPAL AND PLANNING LAW

## Table of Contents

## PART II

## CHAPTER V

## INTRODUCTION TO PLANNING


Introduction 537

A. The Origins and Theory of Planning 538

J. Jocobs, The Death and Life of Great American Cities 538

Note 542

Principles and Prictice of Urban Planning 543

Note 561

Greenspan & Vaughan, "How the Zoning Game is Played: A Look at Land Use Procedures" 561

Note 564

Jones, "The Nature and Purpose of the Official Plan 564

B. The Municipal Role in Planning and The Official Plan 567

(i) Introduction 567

Ontario Economic Council, Subject to Approval 567

Note 571

(ii) The Official Plan and Conformity 572

Note 572

Re Cadillac Development Corporation and City of Toronto 572

Holmes et al. v. Regional Municipalitiy of Halton 576

Notes and Questions 577

(iii) The Limits of Official Plans 578

Re Borough of Scarborough and the Minister of Housing for Ontario 578

(iv) Metropolitan or Regional Official Plans 583

Note 583

Campeau Corporation v. Township of Gloucester 583

C. The Provincial Role in Planning 587

Note 587

White, "Ontario's Land Use Legislation" 587

Note 591

Union Gas Ltd. v. Corporation of Dawn 591

White Paper on The Planning Act, (1979) 595

## CHAPTER VI

## THE PRIVATE CONTROL OF LAND USES

Introduction 597

A. Restrictive Covenants 598

Tulk v. Moxhay 598

London County Council v. Allen 599

Stilwell v. Blackman 604

Shepherd Homes Ltd. v. Sandham 604

Earl of Leicester v. Wells U.D.C. 604

Wrothan Park Estate v. Parkside Homes 604

One Twenty-Five Varsity Road Ltd. v. Twp. of York 605

Re Sekretou and City of Toronto 609

Re Hart et al. and Harrietsfield-Grand Lake Community Association 614

Note 617

B. Building Schemes 617

Hyett, "Restrictive Covenants: An Appraisal of Building Schemes" 617

Megarry & Wade, The Law of Real Property 619

Scharf v. Mac'sMilk Ltd. 623

MacGregor et al. v. Boyd Builders Ltd. et al. 626

Re Lorne Park 633

Re Zierler 634

Shen Investments Ltd. v.Mosca 634

Note 635

Re Dolphin's Conveyance 635

Texaco Antilles Ltd. v. Kernochan 639

C. Modification of Restrictive Covenants 640

Note 640

Re Beardmore 640

Re Beardsley's Application 643

D. Nuisance 644

Walker v. Mckinnon Industries 644

Cairns v. Canada Refining & Smelting Co. 648

Gertsen v. Municipality of Metropolitan Toronto 650

Spur Industries Inc. v. Del E. Webb Dev. Co. 653

Bottom v. Ontario Leaf Tobacco Co. Ltd. 656

Boomer v. Atlantic Cement Company 659

Note 665

CHAPTER VII

ZONING AND LAND USE CONTROL

Introduction 666

A. Introduction to Zoning 667

Makuch, "Zoning: Avenues of Reform" 667

Note 668

B. The Scope of The Zoning Power 669

Note 669

(i) Exclusionary Zoning and the Scope of the Zoning Power 669

Village of Euclid v. Ambler Realty Co. 669

Note 675

R v. Brown Camps Ltd. 675

Notes and Questions 679

City of Barrie v. Brown Camps Residential and Day Schools 680

Notes and Questions 685

R v. Bell (Div. Ct.) 686

R v. Bell (O.C.A.) 692

R v. Bell (S.C.C.) 701

Notes and Questions 709

Note 710

Current Dilemmas and Legal Issues in Housing For All Under Law 710

Notes and Questions 716

C. Discrimination and Zoning 717

Note 717

City of Toronto v. Mandelbaum 717

Note 719

Scarborough Township v. Bond 719

Notes and Questions 722

H. G. Winton v. Corporation of the Borough of North York 723

Re Twp. of North York Restricted By-law 728

City of Ottawa v. Royal Trust Co. 731

Corporation of the City of Brampton 734

D. Bad Faith 735

Note 735

Re Cadillac Development Corp. and City of Toronto 735

Re Wall & Redekop Corp. Ltd. and City of Vancouver 739

Notes and Questions 742

City of Halifax v. Hollet et al. 742

H.G. Winton v. Corporation of the Borough of North York 747

E. The Administration of Zoning By-laws 749

City of Toronto v. Polai 749

Polai v. City of Toronto 750

Notes & Questions 752

F. Prohibiting All Uses 752

R v. Gibson Ex parte Cromiller 752

Corporation of the City of Coquitlan v. Karmanolis 753

## CHAPTER VIII

## ZONING REFORMS AND DEVELOPMENT CONTROL

Introduction 755

A. Limitations on Zoning 756

Note 756

Re Mississauga Golf and Country Club 756

Notes and Questions 759

Re O'Donnell and City of Belleville 759

Notes 761

Town of Uxbridge v. Timbers Brothers Sand and Gravel Ltd. 761

Note 763

Note 764

Makuch, "Zoning: Avenues of Reform" 764

B. Reform of Zoning 769

Note 769

Soo Mill & Lumber Co. Ltd. v. City of Sault Ste. Marie 770

Sandybay Developments Ltd. v. City of London 774

Notes 777

Note 778

Re Cogan et al. and City of Toronto 778

Note 779

| | | |
|---|---|---|
| | Papolis v. Corporation of the Borough of Scarborough | 779 |
| | Note | 781 |
| | Letter on Holding By-law and Development Control | 781 |
| | Note | 787 |
| | Re Walmar Investments and City of North Bay | 788 |
| | White Paper on The Planning Act (1979) | 791 |
| C. | Section 35a of The Planning Act | 792 |
| | Canadian Institute of Public Real Estate Companies et al. v. Corporation of the City of Toronto (Div. Ct.) | 792 |
| | Canadian Institute of Public Real Estate Companies et al. v. Corporation of the City of Toronto (O.C.A.) | 799 |
| | Canadian Institute of Public Real Estate Companies et al. v. Corporation of the City of Toronto (S.C.C.) | 799 |
| | Notes and Questions | 802 |
| | Re Thomas C. Assaly Corp. Ltd. in Trust and City of Ottawa | 802 |
| | 240953 Developments Ltd. et al. v. Corporation of the City of Hamilton | 806 |
| | Note | 807 |
| | Re City of Toronto By-law 234/75 | 807 |
| | City of Toronto Planning Board Report | 811 |
| | Note | 833 |
| | "Not at a Council's Whim", The Globe & Mail | 833 |
| D. | Other Jurisdictions | 835 |
| | Note | 835 |
| E. | Lot Levies | 836 |
| | Clayton Research Associates, Municipal Cash Imports in Ontario: An Exploratory Study | 836 |
| | Notes and Questions | 836 |

Note 849

Re Mills and Land Division Committee of York 850

Notes and Questions 853

Re Steel Company of Canada and Minister of Housing 853

Notes and Questions 861

Pinetree Development Co. Ltd. v. Minister of Housing for Ontario 862

Re Frey and Regional Municipality of Peel Land Division Committee 868

## CHAPTER IX

## PRE-EXISTING RIGHTS OF LANDOWNERS

Introduction 878

A. Ontario 879

(i) The Basic Rule 879

Note 879

City of Ottawa v. Boyd Builders 880

Note 885

(ii) A Pre-existing Intent 886

Note 886

Re Overcomers Church and City of Toronto 886

Note 891

Note 892

R. v. city of Barrie, Ex parte Bernick 892

Notes and Questions 896

Re Donald Bye Excavating Co. Ltd. et al. and City of Peterborough 897

(iii) Proceeding with Dispatch 899

Rethazy et al. v. Corporation of the Town of Lincoln 899

(iv) Good Faith 902

Note 902

Re Cambridge Leaseholds and City of Toronto (No. 2) 902

Note 906

Re 261532 Development Corp. Ltd. and City of Toronto 907

Note 908

(v) The Application Itself 908

Note 908

Re David Gallo Building Co. Ltd. and City of Toronto 908

(vi) Other Jurisdictions 916

Note 916

1. Nova Scotia 916

Chater v. City of Dartmouth 916
Note 924

Re Governors of Dalhousie University College and University and City of Halifax 924

2. British Columbia 925

Monarch Holdings Ltd. v. Oak Bay 925

## CHAPTER X

## CONTINUING RIGHTS OF LANDOWNERS NON-CONFORMING USES

Introduction 920

Note 931

(i) Defining the Uses 931

Central Jewish Institute v. Toronto 931

Note 934

Regina v. Rutherford's Dairy Ltd. 934

Note 937

(ii) Extension or Enlargement of Buildings 938

Re Wilmont andKingston 938

Notes 943

(iii) Changing Uses 943

Regina ex rel. Skimmings v. Cappy 943

(iv) Abandonment of Uses 948

Gayford v. Kolodziej et al. 948

O'Sullivan Funeral Home Ltd. v. Corporation of the City of Sault Ste Marie 949

Notes 951

(v) Amortization of Uses 952

Note 952

City of Los Angeles v. Gage 952

Note 956

(vi) Other Jurisdictions 956

Note 956

CHAPTER XI

PLANNING AND LAND VALUE

Introduction 957

Note 958

A. Origins of Current Legal Theory 958

Romanica v. Greater Winnipeg Water District 958

Note 966

Belfast Corporation v. O.D. Cars Ltd. 966

Notes 972

B. Current Canadian Position 972

Regina Auto Court v. City of Regina 972

Re Simpson and City of Vancouver 974

Rodenbush et al. v. Corporation of the District of North Cowichan 982

Note 985

C. The Ontario Municipal Board's View 985

McGregor and Scarborough 985

Re Etobicoke By-law 1332 981

Re Toronto Restricted Area By-law 348/73 (Excerpt) 995

D. Planning and the Determination of Land Value 996

Note 996

Re Earlinger Developments Ltd. and East York 996

Forum: The Role of the Professions in the Future Environment 1004

Notes and Questions 1007

F. Negligence 1008

Note 1008

Wellbridge Holdings Ltd. v. Metropolitan Corporation of Greater Winnipeg 1008

Bowen et al. v. City of Edmonton (No.2) 1013

Note 1018

## CHAPTER XII

## PROCESS REQUIREMENTS AND THE MUNICIPALITY

Introduction 1019

A. Access to Information 1020

Makuch, Jackson, Freedom of Information in Local Government in Ontario 1020

Notes 1028

B. Right to a Hearing 1029

Note 1029

(i) Municipal Councils, Police Commissions, and Boards of Education 1029

Atkinson et al. v. The Municipality of Metropolitan Toronto 1029

Notes 1033

Re Zadrevec and Town of Brampton 1033

Note 1038

(ii) Planning Boards 1039

Note 1039

Re Florence Nightengale Home and Scarborough Planning Board 1039

Re Cummer-Yonge Investments Ltd. and A. C. Ontario et al. 1042

Starr v. Corporation of the Town of Puslinch et al 1047

Note 1051

(iii) Ministers Orders 1051

Re Orangeville Highlands and A.G. of Ontario 1051

Notes 1054

(iv) Subdivision Agreements 1054

Re Maurice Rollins Construction Ltd. and Township of South Fredricksburg 1054

(v) Committee of Adjustment and Land Division Committees 1057

Note 1057

(vi) Nature of the Hearing Required 1058

Re McMartin et al. v. City of Vancouver 1058

Re Bourque 1065

Notes 1068

(vii) The Ontario Municipal Board 1068

Note 1068

Ontario Municipal Board Rules and Procedure 1069

Focal Properties Ltd. v. Halton Hills 1077

Notes 1080

## CHAPTER XII

## ADMINISTRATIVE REVIEW OF MUNICIPAL ACTION

Introduction 1082

Note 1083

A. The Jurisdiction of the Ontario Municipal Ontario 1083

Re Township of North York Restricted By-law 1083

Notes 1084

Kuchma v. Rural Municipality of Tache 1085

Notes 1086

Re Merrens et al. and Municipality of Metropolitan Toronto 1087

B. The Ontario Municipal Board as Policy Maker - The Court's View 1091

Note 1091

Re Cloverdale Shopping Centre Ltd. and Township of Etobicoke 1091

Notes 1100

Re Hopedale Developments and Town of Oakville 1101

Note 1105

The Town of Innisfil v. The City of Barrie et al. 1105

Notes 1121

C. The Ontario Municipal Board as Policy Maker

The Board's View of Itself 1121

Note 1121

(i) Members Values 1121

Re Town of Vaughan Official Plan 1121

Note 1128

(ii) Government Policy 1128

Re Township of Caledon Official Plan 1128

Note 1132

(iii) Good Planning Principles 1133

Re Lord Nelson Hotel 1133

Note 1138

Note 1146

(iv) Minority Right 1146

Re Toronto Restricted Area By-law 3478-73 1146

Notes 1161

Jowell, "The Limits of a Purlic Hearing as a Tool of Urban Planning" 1164

E. Petitions to the Cabinet 1172

Notes 1172

E. Who Should Make Planning Decisions 1176

Tollefson v. Twp. of Gloucester 1176

Notes 1177

Forum: The Role of the Professional in the Future Environment 1177

White Paper on the Planning Act, (1979) 1185